the owner takes advantage of his undoubted right to refuse the injured party access for purposes of self-help, he should be under a reciprocal affirmative duty to remove the cause of damage himself.

WATERS AND WATER COURSES — PUBLIC RIGHTS — RIGHT TO TAKE FISH AND GAME ON A NAVIGABLE NON-TIDAL STREAM.— The plaintiff, owner of the bed of a navigable non-tidal stream, seeks to enjoin a member of the public from hunting from a boat on that part of the stream which is over the plaintiff's land. *Held*, that the injunction will not issue. *Diana Shooting Club* v. *Husting*, 145 N. W. 816 (Wis.).

For a discussion of the right to fish and hunt in non-tidal waters see this issue of the REVIEW, p. 750.

WITNESSES — COMPELLING TESTIMONY — SUBPŒNA DUCES TECUM TO COMPEL PARTNER TO PRODUCE PARTNERSHIP PAPERS FROM FOREIGN JURISDICTION. — A *subpœna duces tecum* had issued against the defendant, a partner in a firm doing business in New York and Paris, to appear as a witness before the grand jury and bring with him certain checks then retained in the Paris office. Although the checks would have been forwarded on request, the defendant failed to make any reasonable efforts to produce them. *Held*, that the defendant is in contempt. *In re Munroe*, 210 Fed. 326 (Dist. Ct., Mass.).

To enforce a *subpœna duces tecum* it is essential that the document be within the witness' control. *Amey* v. *Long*, 9 East 473. But if he is the legal possessor, he need not have the actual custody. *Steed* v. *Cruise*, 70 Ga. 168. Thus the precise locality of the document is unimportant and it is of no consequence that it happens to be in a foreign jurisdiction. *In re Consolidated etc. Co.*, 80 Vt. 55, 66 Atl. 790; *Holly Mfg. Co.* v. *Venner*, 86 Hun (N. Y.) 42. So if the defendant had been the sole owner of the checks, he was clearly in contempt. Nor should the fact that the checks were partnership property necessarily alter the case. On the aggregate theory of partnership each partner has complete control of the firm property subject to the rights of the others. PARSONS ON PARTNERSHIP, 4 ed., § 255. Or if the "firm" is considered a distinct entity, each partner enjoys the same control, not as joint-owner but as a general agent. PARSONS ON PARTNERSHIP, 4 ed., § 46. This latter conception is similar to that of a corporation. See *Walker* v. *Wait*, 50 Vt. 668, 676. And a *subpœna duces tecum* will issue against an officer who has control of a document belonging to the corporation. *Nelson* v. *United States*, 201 U. S. 92, 115. See also *Lorenz* v. *Lehigh Navigation Co.*, 5 Leg. Gaz. (Pa.) 174. Of course if the other partners refuse to relinquish the papers, the subpœna cannot be enforced. See *Attorney General* v. *Wilson*, 9 Sim. 526, 529. But where, as in the principal case, the subpœnaed partner could have produced the documents by an honest effort, yet unreasonably refused, he should be in contempt. *United States* v. *Collins*, 145 Fed. 709. To require service on every partner would often lead to a failure of justice and should be unnecessary.

BOOK REVIEWS.

COMMENTARIES ON THE LAW OF EVIDENCE IN CIVIL CASES. By Burr W. Jones, Rewritten, Enlarged and Brought with Authorities up to the Present Date by L. Horwitz. Volumes 1 to 5. San Francisco: Bancroft-Whitney Company. 1913, 1914. pp. xxvi, 1031; x, 1071; x, 1036; ix, 976; vi, 1157.

If the editor of the 16th edition of Greenleaf (already Wigmore on Evidence more truly than Taylor on Evidence ever earned its name) had felt warranted

in discarding brackets and leaving the reader to tell the voice of Wigmore from the voice of Greenleaf by ear, he would have banished parts of the text beyond the appendix. Professor Greenleaf himself would certainly have omitted some parts and recast others; for the best book must contain passages that outlive their usefulness, to say nothing of mere errors. Whatever reasons forbid such liberties to another hand forbid yet more peremptorily any blurring of the line between original text and additions. The author's rights are indeed within his own disposition if he be still living, but the reader's are not; and if he has a right to the old text he has a right also to the means of identifying it without the aid of a detective. If, on the other hand, it is to be cut up into unrecognizable fragments and these imbedded in a mass of new matter, what sanctity have the *disjecta membra* which should prevent the editor from remoulding or rejecting them as suits his purpose?

Such, however, is not the theory on which the present work has been prepared. Practically the whole text of Jones on Evidence in its second edition seems to have been preserved *verbatim et literatim;* yet Mr. Horwitz's additions, which more than double its size, are so fused with the original that the reader has nothing but internal evidence to tell him whether he is listening to Professor Jones in 1896 (or 1908) or Mr. Horwitz in 1913. And the care which shows itself throughout the revision is manifest in the welding of the joints.

This method is to be regretted. To say nothing of considerations of style, or the rights of readers, the editor is painfully cramped. The attempt at revision by addition and multiplication alone, without subtraction, compression, or rearrangement, puts the workman in a straitjacket; and diligently and skilfully as Mr. Horwitz has worked, he has been compelled to some odd and amorphous results. After a careful exposition of a new topic, for example, he finds himself obliged to work in Professor Jones's opening sentence on the same subject, with nothing to account for the inevitable repetitions; or coming upon material which needs reënforcement he must needs patch it with a passage like this, neatly stitched at the edges to match the older fabric:

"Here again the term, 'part of the *res gestæ*,' is applied to such declarations, and to such as come under the head of narrative statements; whereas in fact the admissibility rests upon the exercise of the powers of the agent within the scope of his authority. While so far the consequences of treating such declarations of agents under both heads has not resulted in any demonstrable harm, we think that time would be economized if the discussion were excluded altogether from the realm of *res gestæ*, and confined to treatment as suggested by Thayer, under the general rule of evidence applicable to agency."

Subject to such criticisms on its general method, the work is entitled to praise. A sensible and useful book, with a convenient arrangement, and a better separation than is sometimes found between the things which do and those which do not belong in a treatise on Evidence, has been revised with care and intelligence. To be sure, Mr. Horwitz does not always show the enlightened vision which the earlier part of his work leads us to expect. The archaic use of Bacon's maxim, for example, is disappointing; and so is such a deliverance as this:

"The idea of the *res gestæ* presupposes a main fact or principal transaction, and the *res gestæ* mean the circumstances, facts, and declarations which grow out of the main fact, are contemporaneous with it, and serve to illustrate its character."

Often he has failed to profit as he should by the light that shines from Professor Wigmore's pages. But he has done his work with great pains and with a praiseworthy regard for the practitioner's convenience. Some fifty thousand cases,

including the latest, are made accessible; and while the increase from less than fifteen hundred to more than five thousand pages contains matter which a better scheme of revision would have rejected, skilful bookmaking has combined agreeable type with economy of bulk.

One of the good features of the book is the hope it gives that Horwitz on Evidence will come next, as Wigmore followed Wigmore's Greenleaf, and Chamberlayne Chamberlayne's Best. When Mr. Horwitz applies his evident abilities to this task, freed from embarrassing limitations, he will do well to remember that compression is the greatest, as well as the most difficult, service he can render the profession. Anybody can write a long book on a subject he is full of; only a master can write a short one and make it first-rate. Remembering that we have already a treatise on Evidence which is great both in quality and dimensions, he should set before himself as an ideal that excellence which increases in direct ratio with brevity.

E. R. T.

THE LIFE AND CORRESPONDENCE OF PHILIP YORKE, EARL OF HARDWICKE, LORD HIGH CHANCELLOR OF GREAT BRITAIN. By Philip C. Yorke. Vol. I, pp. xvl, 685; Vol. 2, pp. viii, 598; Vol. 3, pp. viii, 653. Cambridge University Press — University of Chicago Press, 1913.

At last we have an adequate life of the great chancellor. Excepting the political lampooners of his own age, who served up the subject in their own style, the first biographer of Hardwicke was Campbell, who did his worst; and Campbell's interpretation of the contemporary pamphleteers has been the basis of most subsequent sketches. Even the article on Hardwicke in the last edition of the Encyclopedia Britannica is based largely on Campbell's life, though in the article on Campbell in the same publication it is said that the execution of his Lives was wretched, that one of the chief faults was "the hasty insinuations against the memory of the great departed who were to him as giants," faults "painfully apparent in the lives of Hardwicke" and others. In addition to Campbell's life, there was a mediocre performance by George Harris; and a short sketch by Foss in his Biographia Juridica which is fair and independent. It was only in 1900, when the Hardwicke papers were purchased by the British Museum, that an authoritative biography became possible.

This work is painstaking and accurate. It is not a great biography. It lacks literary graces; its treatment of Hardwicke's great service to his race, the development of equity, is entirely inadequate; and the plan of segregating the correspondence of a period after the narrative, instead of weaving it into the text, is better adapted to a source-book than to a work of literature. Yet if the book misses greatness it does so by a rather narrow margin. The work has distinct merit. The author shows industry, judgment, fairness, and enthusiasm; he succeeds in making his hero a real human being, a good man; he allows us to follow sympathetically the fortunes of a typical English man of law. It is fortunate that Hardwicke, in what must long remain his standard biography, has been so truly and so lovingly portrayed.

Classic taste, restrained feelings, moderate opinions, simple pleasures, personal politics, nothing unbridled but the bitterest defamation of political rivals; these were characteristics of the England of 1720 to 1760, the England of Philip Yorke, Earl of Hardwicke, Lord Chancellor of England for nearly twenty years. And Hardwicke was suited to his age, as he must have been to live so successful a life. He was handsome, polished, tactful, moderate. The son of a country attorney in modest circumstances, he made useful friends of his fellow-students, his dinner-companions, his mere acquaintances; they